

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0212-WQ-E TCEQ ID: RN105233530 CASE NO.:35301
RESPONDENT NAME: SENDERO EXTERIORS, INC.

Page 1 of 2

| | | |
|--|--|---|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |

| | | |
|---|---|---|
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input checked="" type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |

SITE WHERE VIOLATION(S) OCCURRED: 3332 and 3336 Camden Lane, Flower Mound, Denton County

TYPE OF OPERATION: concrete finishing business

SMALL BUSINESS: ☒ Yes ☐ No ☐ N/A

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the Respondent disposed an unidentified substance in and around the water meter boxes at the complainant's residence, and that the drinking water at the complainant's residence was contaminated with solvents. There is no record of additional pending enforcement actions regarding this respondent.

INTERESTED PARTIES: The complainant was prepared to testify at SOAH, and may wish to address the Commission at agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired November 2, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492

TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Roberto Guerrero III, President, Sendero Exteriors, Inc., 909 N. Church Street, Anna, Texas 75409

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|--|---|---|
| <p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: May 22, 2007</p> <p>Date of Investigation Relating to this Case: May 23, 2007</p> <p>Date of NOE Relating to this Case: December 17, 2007</p> <p>Background Facts: The EDPRP was filed on July 14, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on July 18, 2008. The Respondent filed an answer requesting a hearing and the matter was referred to SOAH. During the preliminary hearing, the ED and the Respondent agreed on an evidentiary hearing date of August 11, 2009. The ALJ issued Order no. 1 setting the evidentiary hearing date for August 11, 2009. On August 11, 2009, the ALJ convened the evidentiary hearing, but the Respondent failed to appear. The ED requested that the matter be remanded back to the ED so that a Default Order may be entered and the case dismissed from the SOAH Docket.</p> <p>Current Compliance Status: The Town of Flower Mound removed and properly disposed the contaminated soil at the site. The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>WQ: Failed to prevent the unauthorized discharge of industrial waste into or adjacent to waters in the state [TEX. WATER CODE § 26.121].</p> | <p>Total Assessed: \$ 8,736</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$ 8,736</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease and desist the unauthorized discharge of industrial solid waste. 2. Within 15 days, submit written certification demonstrating compliance. |



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision January 29, 2008

TCEQ

| | | | | | |
|-------|----------|-------------|-----------|-------------|---------|
| DATES | Assigned | 2-Jan-2008 | | | |
| | PCW | 24-Jan-2008 | Screening | 25-Jan-2008 | EPA Due |

RESPONDENT/FACILITY INFORMATION

| | | | | | |
|----------------------|-------------------------|--|--------------------|-------|--|
| Respondent | Sendero Exteriors, Inc. | | | | |
| Reg. Ent. Ref. No. | RN105233530 | | | | |
| Facility/Site Region | 4 - Dallas/Fort Worth | | Major/Minor Source | Minor | |

CASE INFORMATION

| | | | | |
|-------------------|----------------|-------------------|--------------------|----------|
| Enf./Case ID No. | 35301 | No. of Violations | 1 | |
| Docket No. | 2008-0212-WQ-E | Order Type | Findings | |
| Media Program(s) | Water Quality | Enf. Coordinator | Michael Meyer | |
| Multi-Media | | EC's Team | Enforcement Team 7 | |
| Admin. Penalty \$ | Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$5,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **0% Enhancement** **Subtotals 2, 3, & 7** **\$0**

Notes: There were no NOV's or orders during the previous five years.

Culpability **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

| | | |
|---------------|------------|------------------------------|
| | Before NOV | NOV to EDRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes: The Respondent does not meet the good faith criteria.

| | |
|----------------------------|---------|
| Total EB Amounts | \$3,736 |
| Approx. Cost of Compliance | \$3,736 |

0% Enhancement* **Subtotal 6** **\$0**
Capped at the Total EB \$ Amount*SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$5,000****OTHER FACTORS AS JUSTICE MAY REQUIRE** **57%** **Adjustment** **\$3,736**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend an adjustment to capture the avoided cost associated with Violation No. 1

Final Penalty Amount **\$8,736****STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$8,736****DEFERRAL** **0% Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$8,736**

Screening Date 25-Jan-2008

Docket No. 2008-0212-WQ-E

PCW

Respondent Sendero Exteriors, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35301

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105233530

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

There were no NOVs or orders during the previous five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 25-Jan-2008
Respondent Sendero Exteriors, Inc.
Case ID No. 35301
Reg. Ent. Reference No. RN105233530
Media [Statute] Water Quality
Enf. Coordinator Michael Meyer
Violation Number 1

Docket No. 2008-0212-WQ-E

PCW

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

Rule Cite(s)

Tex. Water Code § 26.121

Violation Description

Failed to prevent the unauthorized discharge of industrial waste into or adjacent to waters in the state, as documented during an investigation conducted on May 23, 2007. Specifically, the investigator observed dead grass accompanied by a strong solvent odor in and around the water meter and irrigation boxes for the residences at 3332 and 3336 Camden Lane in Flower Mound, Denton County. The investigator collected a soil sample from inside the water meter box at 3336 Camden Ln. Analysis of the soil sample revealed ethylbenzene of 710 mg/kg; m, p xylene - 2,800 mg/kg; o - xylene - 610 mg/kg toluene - 17 mg/kg and benzene 0.087 mg/kg. Analysis of water samples collected from outside water taps at 3332 and 3336 Camden Ln. did not indicate contaminants above maximum contaminant levels. Notarized statements have been submitted to the TCEQ, from residents of 3332 and 3336 Camden Lane, stating that on or about April 24, 2007 the Respondent allegedly disposed of unknown liquid waste onto the soils in and around the water meter boxes for residences at 3332 and 3336 Camden Lane.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | x | | |
| Potential | | | |

Percent 50%

>> Programmatic Matrix

| | | Moderate | Minor |
|--|--|----------|-------|
| | | | |

Percent 0%

Matrix Notes

Human health and the environment was exposed to significant amounts of pollutants which exceed levels protective of human health and the environment. The Town of Flower Mound remediated the affected area and provided bottled water for the residents until the remediation was completed.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

20 Number of violation days

| | | |
|----------------------------|--------------|---|
| mark only one with an x | daily | |
| | monthly | x |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | |

Violation Base Penalty \$5,000

One monthly event from the May 23, 2007 investigation to the date corrective action was completed (June 12, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,736

Violation Final Penalty Total \$8,736

This violation Final Assessed Penalty (adjusted for limits) \$8,736

Economic Benefit Worksheet

Respondent Sendero Exteriors, Inc.
Case ID No. 35301
Reg. Ent. Reference No. RN105233530
Media Water Quality
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|-----------|---------------|-------------|-------|----------------|---------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |
| Notes for DELAYED costs | | | | | | | |
| Avoided Costs | | | | | | | |
| ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | | |
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | \$3,736 | 23-May-2007 | 12-Jun-2007 | 0.0 | \$0 | \$3,736 | \$3,736 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Notes for AVOIDED costs | | | | | | | |
| The cost to remove and properly dispose of the contaminated soil and resod the affected area based on a manifest (Manifest No. 313111) dated June 12, 2007 and an invoice dated December 6, 2007. The Date Required is the May 23, 2007 investigation and the Final Date is the date remediation was completed (June 12, 2007). | | | | | | | |
| Approx. Cost of Compliance | | \$3,736 | | TOTAL | | \$3,736 | |

Compliance History

| | | | | |
|---|---|-------------------------|---|-------------------|
| Customer/Respondent/Owner-Operator: | CN603195611 | Sendero Exteriors, Inc. | Classification: AVERAGE | Rating: 3.01 |
| Regulated Entity: | RN105233530 | SENDERO EXTERIORS | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |
| <hr/> | | | | |
| ID Number(s): | <hr/> | | | |
| Location: | 3336 CAMDEN LN, FLOWER MOUND, TX, 75028 | | Rating Date: September 01 07 Repeat Violator: NO | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | | |
| Date Compliance History Prepared: | February 08, 2008 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | February 09, 2003 to February 08, 2008 | | | |
| <hr/> | | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Michael Meyer | | Phone: | (512) 239-4492 |

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | |
|------------------------|--|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. N/A |
| B. | Any criminal convictions of the state of Texas and the federal government. N/A |
| C. | Chronic excessive emissions events. N/A |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) |
| F. | Environmental audits. N/A |
| G. | Type of environmental management systems (EMSs). N/A |
| H. | Voluntary on-site compliance assessment dates. N/A |
| I. | Participation in a voluntary pollution reduction program. N/A |
| J. | Early compliance. N/A |
| Sites Outside of Texas | |
| | N/A |

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SENDERO EXTERIORS, INC.,
RN105233530**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0212-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Sendero Exteriors, Inc. ("Sendero").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Sendero operates a concrete finishing business located at 909 North Church Street in Anna, Collin County, Texas.
2. Sendero discharged waste into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an inspection on May 23, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Sendero failed to prevent the unauthorized discharge of industrial waste into or adjacent to waters in the state. Specifically, on or about April 24, 2007, Sendero disposed of a liquid containing ethylbenzene, m,p xylene, o-xylene, toluene, and benzene in and around the water meter boxes for the residences at 3332 and 3336 Camden Lane in Flower Mound, Denton County, Texas (the "Site").
4. On or about June 12, 2007, the Town of Flower Mound removed and properly disposed of the contaminated soil at the Site and repaired the water meter boxes for the residences at 3332 and 3336 Camden Lane in Flower Mound.
5. Sendero received notice of the violation on or about December 22, 2007.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Sendero Exteriors, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on July 14, 2008.
7. By letter dated July 14, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Sendero with notice of the EDPRP. According to the return receipt "green card," Sendero received notice of the EDPRP on July 18, 2008, as evidenced by the signature on the card.
8. Sendero filed an answer requesting a hearing on July 23, 2008, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on January 27, 2009.
9. On February 23, 2009, the TCEQ Chief Clerk mailed the Notice of the preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Sendero. According to the return receipt "green card," Sendero received notice of the March 26, 2009 preliminary hearing on February 26, 2009, as evidenced by the signature on the card.
10. On March 26, 2009 the Administrative Law Judge ("ALJ") convened the preliminary hearing. At the preliminary hearing, the Executive Director and Sendero agreed on an evidentiary hearing date of August 11, 2009.
11. On August 11, 2009, the ALJ convened the evidentiary hearing, but Sendero failed to appear. The Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case dismissed from the SOAH Docket.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Sendero is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Sendero failed to prevent the unauthorized discharge of industrial waste into or adjacent to waters in the state, in violation of TEX. WATER CODE § 26.121.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Sendero with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

4. As evidenced by Finding of Fact No. 8, Sendero filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 10, Sendero was provided proper notice of the evidentiary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058 and 30 TEX. ADMIN. CODE §§ 70.104, and 80.6(b)(3).
6. As evidenced by Finding of Fact No. 11, Sendero failed to appear for the evidentiary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE §§ 70.106(b) and 80.113(d), the Commission may enter a Default Order against Sendero and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Sendero for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of eight thousand seven hundred thirty-six dollars (\$8,736.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Sendero is assessed an administrative penalty in the amount of eight thousand seven hundred thirty-six dollars (\$8,736.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Sendero's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid

within 30 days after the effective date of this Order and shall be sent with the notation "Re: Sendero Exteriors, Inc.; Docket No. 2008-0212-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Sendero shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, cease and desist the unauthorized discharge of industrial solid waste; and
- b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Team, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

With a copy to:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, TX 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Sendero. Sendero is ordered to give notice of this Order to personnel who maintain day-to-day control over the business operations referenced in this Order.
5. If Sendero fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Sendero's failure to comply is not a violation of this Order. Sendero shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Sendero shall notify the Executive Director within seven days after Sendero becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Sendero shall be made in writing to the Executive Director. Extensions are not effective until Sendero receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Sendero if the Executive Director determines that Sendero has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BENJAMIN O. THOMPSON

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

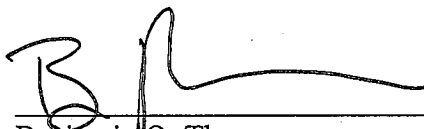
“My name is Benjamin O. Thompson. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Sendero Exteriors, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 14, 2008.

I sent the EDPRP to Sendero at its last known address on July 14, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Sendero received notice of the EDPRP on July 18, 2008, as evidenced by the signature on the card. Sendero filed an answer requesting a hearing on July 23, 2008, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on January 27, 2009.

A preliminary hearing was held at SOAH on March 26, 2009, and Sendero Exteriors, Inc. appeared by phone through its president, Roberto Guerrero III. At the preliminary hearing, the Executive Director and Sendero Exteriors, Inc. agreed on an evidentiary hearing date of August 11, 2009. The Administrative Law Judge then issued her Order No. 1, which set the hearing date of August 11, 2009.

Sendero Exteriors, Inc. failed to appear at the evidentiary hearing on August 11, 2009. At that hearing, I requested and received a finding that Sendero Exteriors, Inc. was served with proper notice of the hearing. I also requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Sendero Exteriors, Inc. and assess the penalty recommended by the Executive Director."



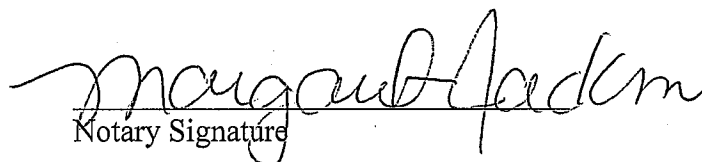
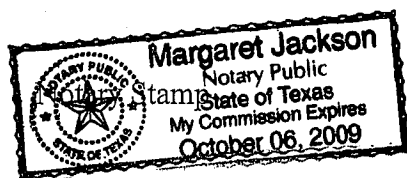
Benjamin O. Thompson

Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Benjamin O. Thompson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 17 day of September, 2009.


Notary Signature